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09/582,556	08/22/2000	Jan Abraham Van Asselt	112134-00102	2767

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WASHINGTON, DC 20037

EXAMINER
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ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

*26*

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/582,556

**Applicant(s)**

VAN ASSELT, JAN ABRAHAM

**Examiner**

Mitra Aryanpour

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-26 and 28-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-26, 28 and 30-34 is/are rejected.
- 7) ☐ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Applicant's Brief*

1. Applicant's arguments, see Notice of Appeal, filed 04 November 2004, with respect to the rejection(s) of claim(s) 1-5, 7-26, 28-25 under 103(a) rejection of Lingbeek in view of Albert, Scher et al and alternatively Ring and further in view of Janis have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection has been made under 103(a).

### *Drawings*

2. New corrected drawings are required in this application because in figure 1, the assembly showing the two positions of the reciprocating means and the lower guideway shown in full-line and broken-line should also show the ball (7) in full- and broken-lines. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the slack must be shown and identified or the feature(s) canceled from the claim(s). No new matter should be entered. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the lower guideway between the first and second upstanding stable supports being slack when the ball is at rest.

***Claim Objections***

5. Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for being dependent on a canceled claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form. Claim 8 is dependent on claim 6, which was canceled.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

7. Claims 8, 32-35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 8, the disclosure provides support for the lower guideway to be attached to the stable support, however, the specification does not provide support for the lower guideway to be adjustably engaged (see page 3, lines 21-24 and page 4, lines 1-3). As best seen from the drawings the lower guideway should be adjustably connected to the stable supports, but

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specification indicates that the lower guideway are adjustably engaged with the ground. Therefore, it is unclear how the lower guideway is adjustably engaged with the ground? Unless the position of the stables is changed with respect to the ground!

Regarding claims 32-34, the claims only require the apparatus to have at least one upstanding stable support. Therefore, the minimum requirement would be one stable support. The specification as originally filed defines a stable support as a pole or wall. No written explanation or figures have been provided for a clear understanding of how to make and/or use the inventive claims. Therefore, the claims are vague, inaccurate and indefinite.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-5, 7-9, 11-15, 18, 19, 30, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lingbeek (3,630,521) in view of Ring (5,460,364).

Regarding claim 1, Lingbeek shows an apparatus for use in playing and practicing ball games comprising upper and lower guideways (2), reciprocating means (4) connected to and freely moveable along the upper and lower guideways (2), and a ball (5) connected to the reciprocating means (4); the upper and lower guideways are substantially parallel (see figure 1). Lingbeek is silent regarding the use of a substantially inelastic reciprocating means instead of an elastic reciprocating means. Ring shows a ball batting practice apparatus, wherein the reciprocating means (30) can be fabricated from elastic (for weak hitters or younger players) or

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non-elastic (for strong hitters) materials (column 4, lines 4-11) to suit the end users skill level. In view of Ring it would have been obvious to one of ordinary skill in the art at the time the invention was made to have interchanged the reciprocating means of Lingbeek with substantially inelastic or semi-elastic reciprocating means, the motivation being to accommodate and meet the strength of various players. With regards to the inclined upper and lower guideways, inasmuch as applicant has defined an “inclined” upper and lower guideway, Lingbeek would include an inclined upper and lower guideway during normal use and operation, since in actuality nothing is perfectly straight, therefore, the upper and lower guideways will inherently have a slight inclination with respect to the ground and yet be substantially parallel with respect to each other. It is well accepted that installation of support posts, such as that shown in Lingbeek, are rarely installed in a perfect upright position. Accordingly, upon ones skilled in the art installing the device of Lingbeek, it is readily apparent that a majority of those installed would not be perfectly upright resulting in a slight inclination as set forth in applicant’s claims.

Regarding claim 2, Lingbeek shows the maximum height of the upper guideway (2) above the ground level (the end of the post above the dashed line) to be greater than the length of the reciprocating means (4).

Regarding claims 3 and 4, Lingbeek shows the upper and lower guideways (2) are substantially parallel and are generally normal to the ground.

Regarding claim 5, again inasmuch as applicant has defined an “inclined” upper and lower guideway and as discussed above, Lingbeek also shows an inclined upper and lower guideway, since in actuality nothing is perfectly straight, therefore, the upper and lower

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guideways will inherently have a slight inclination with respect to the ground and yet be substantially parallel with respect to each other.

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Regarding claim 7, Lingbeek shows the upper and lower guideways being attached to a pole (1; see column 1, lines 40-42).

Regarding claim 8, Lingbeek shows the lower guideway to be adjustably engaged with the ground (the position of the support poles can be changed).

Regarding claim 9, Lingbeek shows the reciprocating means comprises an upstanding line (4) connected to the upper and lower guideways (2).

Regarding claims 11 and 12, Lingbeek shows the reciprocating means (4) is connected to the upper and lower guideways means (2) through a slide (3), wherein the slide is a ring (see figure 1).

Regarding claims 13-15, Lingbeek shows the reciprocating means (4) is made of low friction material (it can be made of elastic or rubber, both of which are a form of plastic).

Albert also shows the upper guide way to be made of a plastic covered line (column 1, lines 62-66); and the reciprocating means (23) to be partially covered by a plastic sleeve (30).

In view of Albert it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a plastic cover for the reciprocating means of Lingbeek, the motivation being to protect the guide and/or reciprocating means from damage due to repetitive use. since the use of this material for both the guide and the reciprocating means provides added protection and reduces cost of manufacturing.

Regarding claims 18 and 19, Lingbeek shows the ball can be connected at any point along the reciprocating line (4) using stop means (6) and the ball (5) can be of any size, shape or material desired (see column 1, lines 47 and 48).



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Regarding claim 30, Lingbeek shows the reciprocating means to an elastic line. However, Lingbeek's line as modified in view of Ring above (see the comments in claim 1) can be made of inelastic or semi-elastic lines. It is well known that elastic or resilient lines, provide a means for storing the energy upon being struck. Additionally, it is well known when using inelastic line, in order to accommodate for the lack of resiliency in the line, hence the inability to store energy to make the line slack. The Examiner takes Official Notice of the equivalence of slacked inelastic line and an elastic line for their use in the games and training art and the selection of any of these known lines to form at least a portion of the reciprocating line of Lingbeek, would be within the level of ordinary skill in the art.

Regarding claim 34, see the comments for claim 1.

10. Claims 10, 16, 17, 20-26, are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 9, and further in view of Janis (4,138,107).

Regarding claim 10, Lingbeek shows the reciprocating means to be made of one continuous line and not constructed of two upstanding lines. Janis shows the reciprocating means (14) can be made of one continuous line (figure 5) or a combination of two separate lines (figure 2) connected to the ball; the reciprocating means is connected to the upper and lower guideway means through a slide (see figures 3 and 7), wherein the slide comprises a hook (column 3, lines 10-11). In view of Janis it would have been obvious to make the reciprocating line of Lingbeek of two separate lines, the motivation being having two separate lines would limit the movement of the ball along the length of the line and provide better ball control.

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Regarding claim 16, Lingbeek shows the upper and lower guideways to be made of a wire. It is well known that wires are considered as substantially rigid material (see column 1, lines 43-45). In the event applicant disagrees, Janis shows the upper and lower guideways are made of a substantially rigid material (column 1, lines 52-58), wherein the guide ways form a track and are capable of receiving a runner (see figures 1-7). In view of Janis it would have been obvious to one having ordinary skill in the art to have made the guideways of rigid material, the motivation being to add strength and stability so that the reciprocating means and glide more steadily.

Regarding claim 17, Lingbeek is silent regarding the material used for the wire. A wire is often taught of as a pliable metallic wire, however, other material are also known to be used. The Examiner takes Official Notice of the equivalence of plastic and metallic wires for their use in the games and training art and the selection of any of these known material to form the guideways of Lingbeek, would be within the level of ordinary skill in the art.

Regarding claim 20, see the comments for claims 1 and 10.

Regarding claim 21, see the comments for claim 4.

Regarding claim 22, Lingbeek shows the upper and lower guideway comprises a string or rope (see column 1, lines 43 and 44).

Regarding claims 23 and 24, see the comments for claims 13 and 14.

Regarding claim 25, see the comments for claim 11.

Regarding claim 26, see the comments for claim 12.

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11. Claims 28 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 20 and further in view of Albert (3,086,775).

Regarding claim 28, Lingbeek as modified above, does not show the posts (1) to have a guide rope and peg, but teaches that the stable supports can be posts, trees, poles, buildings, or any support sufficiently spaced to support the guideways (2). Albert further shows the stable support (11) to be additionally secured in place using ropes (12) and pegs (13). In view of Albert it would have been obvious to include ropes and pegs for the stable support of Lingbeek, the motivation being to add additional stability to the overall structure.

Regarding claim 31, see the comments for claim 28.

***Allowable Subject Matter***

12. Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Claims 32 and 34 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. Claims 33 and 35 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cooper; Gilbey-Thompson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

MA  
20 January 2004

  
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